

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

JOSEPH & JOLLY CORPORATION §
DBA AMERICA'S BEST VALUE INN, §
Plaintiff §

V. §

UNITED NATIONAL INSURANCE §
COMPANY, §
Defendant. §

Civil Action No. 4:19-cv-295
JURY

DEFENDANT'S NOTICE OF REMOVAL

TO THE HONORABLE UNITED STATES DISTRICT JUDGE:

PLEASE TAKE NOTICE that pursuant to 28 U.S.C. §§ 1441 and 1446, Defendant, United National Insurance Company ("Defendant") hereby files this Notice of Removal from the 151ST District Court of Harris County, Texas to the United States District Court for the Southern District of Texas, Houston Division. In support of this Notice, Defendant respectfully shows as follows:

Preliminary Statement

1. This lawsuit involves a dispute over Defendant's handling of Plaintiff's insurance claims for alleged damages to its property from a storm. United National Insurance Company is not a citizen of Texas. Accordingly, there is complete diversity between the parties, and as the amount in controversy exceeds \$75,000, removal is proper in this case.

Procedural Background

2. On December 28, 2018, Plaintiff filed an Original Petition, Jury Demand, Request for Disclosure, Requests for Production, and Interrogatories styled *Joseph & Jolly Corporation*

dba America's Best Value Inn v. United National Insurance Company, Cause No. 2018-91313, in the 151ST Judicial District Court of Harris County, Texas. Defendant was served with the Original Petition on January 4, 2019. Defendant also demanded a trial by jury in its Original Answer filed on January 28, 2019 in the 151ST Judicial District Court of Harris County, Texas.

3. This Notice of Removal has been filed within 30 days after receipt of the Petition as required by 28 U.S.C. § 1446(b).

Nature of the Suit

4. This lawsuit involves a dispute over the handling of Plaintiff's insurance claim for damages to its property resulting from a storm. Plaintiff claims it is entitled to more than \$1,000,000.00 for claims arising out of alleged damage to its property sustained as a result of "a severe weather related event" in August 2017. *See Plaintiff's Original Petition, pages 3, 17*. The insured property is located within Harris County, Texas, which is within the Southern District of Texas, Houston Division. Plaintiff asserts causes of action for negligence, breach of contract, violations of the Texas Deceptive Trade Practices Act, and violations of the Texas Insurance Code and breach of the duty of good faith and fair dealing against Defendant. Plaintiff seeks to recover actual damages, consequential damages, statutory interest, additional or punitive damages, costs of court, and attorneys' fees. Defendant generally denies Plaintiff's claims.

5. The storm which allegedly damaged the Plaintiff's property occurred on or around August 31, 2017. Plaintiff thereafter submitted a claim to Defendant against the Policy covering its property.

6. Defendant assigned an independent adjuster, Laurie Payne, to adjust the claim.

7. Plaintiff alleges that Defendant was not diligent in investigating Plaintiff's loss and/or paying its claim.

Basis for Removal

8. Removal of this action is based on diversity of citizenship pursuant to 28 U.S.C. § 1332. In its Petition, Plaintiff erroneously refers to itself as an individual residing in Harris County. *See Plaintiff's Original Petition*. However, Defendant visited the Texas Secretary of State's website and upon information and belief Plaintiff is a Texas corporation domiciled in Texas. The subject property, which is owned by Plaintiff, is located in Harris County.

9. Defendant is a Pennsylvania company with its principal place of business in Bala Cynwyd, Pennsylvania. It is a wholly owned, direct subsidiary of American Insurance Service, Inc., a Pennsylvania corporation. Accordingly, Defendant is domiciled in and a resident of Pennsylvania. *See Affidavit of Kate Wilkinson*.

10. There is complete diversity of citizenship between the parties.

11. This Court has original jurisdiction over this case because it is a suit between citizens/entities of different states, and Plaintiff claims to be entitled to damages in excess of \$75,000.00, exclusive of interest and costs. 28 U.S.C. § 1332(a). *See Plaintiff's Original Petition which seeks an amount in excess of \$1,000,000.00, page 17*.

The Removal is Procedurally Correct

12. Defendant was served with the Original Petition on January 4, 2019. Therefore, this Notice of Removal is filed within the 30-day time period required by 28 U.S.C. § 1446(b).

13. Venue is proper in this district under 28 U.S.C. § 1441(a) because this district and division embrace the place in which the removed action has been pending and because a substantial part of the events giving rise to the Plaintiff's claim allegedly occurred in this district.

14. Exhibit "A" to this Notice contains copies of all process and pleadings filed in the state court proceeding in Harris County, Texas.

15. United National Insurance Company is the sole Defendant in this removed action; consequently, all Defendants join in and consent to this Removal.

16. Pursuant to 28 U.S.C. § 1446(d), a copy of this Notice of Removal will be filed with the Clerk of the District Courts for Harris County, Texas and served upon Plaintiff through its counsel of record.

WHEREFORE, Defendant hereby requests that this action be removed from the 151ST District Court of Harris County, Texas to the United States District Court for the Southern District of Texas, Houston Division, and that this Court enter such further orders as may be necessary and appropriate.

Dated January 28, 2019

Respectfully submitted,

/s/ Richard J. Kasson
RICHARD J. KASSON
Attorney-in-Charge
State Bar No. 24002392
Southern District of Texas Federal ID No. 21614
rkasson@gcaklaw.com
REBECCA H. ADUDELLE
State Bar No. 24097280
Southern District of Texas Federal ID No. 3050524
raduddell@gcaklaw.com
GONZALEZ, CHISCANO, ANGULO & KASSON, P.C.
9601 McAllister Freeway, Suite 401
San Antonio, Texas 78216
Phone: (210) 569-8500
Fax: (210) 569-8490

**ATTORNEYS FOR DEFENDANT, UNITED
NATIONAL INSURANCE COMPANY**

CERTIFICATE OF SERVICE

I hereby certify that on this the **28th** day of **January 2019**, a true and correct copy of the foregoing instrument was duly served upon all counsel of record via the Court's electronic filing system, facsimile and/or regular mail:

James M. McClenny

Email: James@mma-llc.com

J. Zachary Moseley

Email: Zach@mma-llc.com

Derek L. Fadner

Email: Derek@mma-llc.com

McClenny Moseley & Associates, PLLC

411 N. Sam Houston Parkway E., Suite 200

Houston, Texas 77060

Tel: (713) 334-6121

Fax: (713) 322-5953

/s/ Richard J. Kasson

RICHARD J. KASSON

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

JOSEPH & JOLLY CORPORATION
DBA AMERICA'S BEST VALUE INN,
Plaintiff

V.

UNITED NATIONAL INSURANCE
COMPANY,
Defendant.

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Civil Action No. _____
JURY

AFFIDAVIT OF KATE WILKINSON

STATE OF PENNSYLVANIA §
§
COUNTY OF MONTGOMERY §

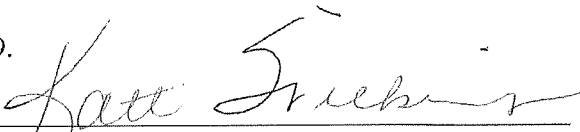
BEFORE ME, the undersigned authority, on this day personally appeared KATE WILKINSON, who, being by me duly sworn, deposed as follows:

"My name is KATE WILKINSON. I am over the age of eighteen (18) years, of sound mind, and competent to make this affidavit. I have never been convicted of a felony nor a misdemeanor involving moral turpitude. I am the Director of Claims for Global Indemnity Group, Inc., of which United National Insurance Company is one of its indirect subsidiary insurance companies, and I have personal knowledge of the facts herein stated and they are true & correct.

United National Insurance Company is incorporated in Pennsylvania with its principal place of business in Pennsylvania. United National Insurance Company is not a citizen of Texas."

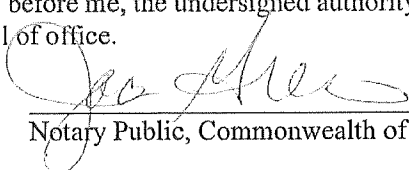
Further, Affiant sayeth naught.

SIGNED this 22nd day of January, 2019.


KATE WILKINSON

SUBSCRIBED AND SWORN TO before me, the undersigned authority, on this the 22nd day of January, 2019, witness my hand and seal of office.

COMMONWEALTH OF PENNSYLVANIA
NOTARIAL SEAL
Joan Greco, Notary Public
Lower Merion Twp, Montgomery County
My commission expires November 15, 2019


Notary Public, Commonwealth of Pennsylvania

JS 44 (Rev. 08/16)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

JOSEPH & JOLLY CORPORATION DBA AMERICA'S BEST
VALUE INN

(b) County of Residence of First Listed Plaintiff **FORT BEND, TX**
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

James M. McClenny / Derek L. Fadner 713-334-6121
MCCLENNY MOSELEY & ASSOCIATES, PLLC
411 N. Sam Houston Pkwy E., Ste. 200 Houston, TX 77060

DEFENDANTS

UNITED NATIONAL INSURANCE COMPANY

County of Residence of First Listed Defendant **MONTGOMERY, PA**
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF
THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

Richard J. Kasson / Rebecca H. Aduddell 210-569-8500
GONZALEZ, CHISCANO, ANGULO & KASSON, PC
9601 McAllister Fwy., Ste. 401 San Antonio, TX 78216

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☐ 2 U.S. Government Defendant
- ☐ 3 Federal Question
(U.S. Government Not a Party)
- ☒ 4 Diversity
(Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|----------------------------|----------------------------|---|---------------------------------------|---------------------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input checked="" type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input checked="" type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Click here for: [Nature of Suit Code Descriptions.](#)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input checked="" type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	PRISONER PETITIONS Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

V. ORIGIN (Place an "X" in One Box Only)

- ☐ 1 Original Proceeding
- ☒ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from Another District (specify)
- ☐ 6 Multidistrict Litigation - Transfer
- ☐ 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
28 U.S.C. 1441 and 1446

Brief description of cause:
Insurance Coverage

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$
1,000,000.00

CHECK YES only if demanded in complaint:
JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE
01/28/2019

SIGNATURE OF ATTORNEY OF RECORD
/s/ Richard J. Kasson

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____